

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
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**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NO.:** 4-04-121

**APPLICANT:** Miran Enterprises, LLC

**AGENT:** Majid Amirani

**PROJECT LOCATION:** 1510 Las Virgenes Road, Calabasas (Los Angeles County)

**PROJECT DESCRIPTION:** Construction of a two story, 34 ft. high 4,452 sq. ft. single-family residence with attached 595 sq. ft. garage, septic system, retaining walls, paved driveway, access stairway, and 3,713 cu. yds. of grading (3,650 cu. yds. cut; 63 cu. yds. fill; 3,587 cu. yds. export). The application also includes after-the-fact approval of the subject parcel that was created pursuant to Certificate of Compliance # 88-0083 and restoration of an unpermitted dirt road back to natural conditions.

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|----------------------------|-----------------------------|
| <b>Lot area:</b>           | 1.94 acres                  |
| <b>Building coverage:</b>  | 1,954 sq. ft.               |
| <b>Pavement coverage:</b>  | 5,643 sq. ft.               |
| <b>Landscape coverage:</b> | 25,757 sq. ft.              |
| <b>Height:</b>             | 34 ft. above existing grade |
| <b>Parking spaces:</b>     | 3                           |

**LOCAL APPROVALS RECEIVED:** Los Angeles County Geotechnical and Materials Engineering Division Geologic and Soils Engineering Review Sheets recommendations of approval; L.A. County "Approval in Concept;" L.A. County Health Department conceptual approval for private sewage disposal system; L.A. County Fire Department approval of Final Fuel Modification Plan and approval of driveways and turnarounds.

**SUBSTANTIVE FILE DOCUMENTS:** Conditional Certificate of Compliance #88-0083 recorded as document 88-1189731 on July 28, 1988 and corrected in recordation 88-1245384 on August 8, 1988; Certificate of Compliance #88-0083 Clearance of Conditions recorded as document 91-567668 on April 22, 1991; "Biological Study, 1510 Las Virgenes Road," by Andrew McGinn Forde, January 25, 2005; "Preliminary Geologic and Soils Engineering Investigation, Proposed Single Family Residence, APN 4455-034-035, Las Virgenes Road" by GeoConcepts, Inc, October 5, 2004; "Percolation Feasibility Study and Hydrogeological Evaluation Report for Proposed Sewage Disposal System via Seepage Pit, APN 4455-034-035, 1520 Las Virgenes Road" by John Helms, August 6, 2004; "Response to Review Comments for Percolation Feasibility Study for a Proposed Waste Disposal System" by John Helms, September 14, 2004; and "Supplemental Report No. 1, 1510 Las Virgenes Road, Los Angeles County, CA" by Geoconcepts, Inc, March 25, 2005.

### **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends **APPROVAL** of the proposed project with **THIRTEEN (13) SPECIAL CONDITIONS** regarding (1) geologic recommendations, (2) drainage and polluted runoff control, (3) landscaping and erosion control plans, (4) assumption of risk, (5) removal of natural vegetation, (6) future development, (7) habitat impact mitigation, (8) lighting restrictions, (9) structural appearance, (10) removal of excess excavated material, (11) deed restriction, (12) cumulative impact mitigation, and (13) condition compliance.

The project site is a vacant 1.95-acre parcel (APN 4455-034-035) located on Las Virgenes Road in the Santa Monica Mountains. The property is located in chaparral habitat considered to be environmentally sensitive habitat area (ESHA). However, a portion of the site has been disturbed by past development that occurred prior to the effective date of the Coastal Act including a 30-foot wide area adjacent to Las Virgenes Road held in easement by Los Angeles County. The past development also includes a dirt road, which spans from Las Virgenes Road to the northern property line of the subject parcel, which does not predate the Coastal Act, but was not authorized in a CDP.

The applicant proposes to construct a two story, 34 ft. high 4,452 sq. ft. single-family residence with attached 595 sq. ft. garage, septic system, retaining walls, paved driveway, access stairway, and 3,713 cu. yds. of grading (3,650 cu. yds. cut; 63 cu. yds. fill; 3,587 cu. yds. export). Additionally, the applicant proposes to restore the existing unpermitted dirt road on the property back to natural conditions. Construction of the residence, driveway, septic system, access stairway, and fuel modification required for the structure for fire protection purposes requires the removal of chaparral and coastal sage scrub ESHA. Additionally, the residence will be highly visible from Las Virgenes Road and neighboring parkland.

Standing alone, Section 30240 would require the denial of the proposed development to prevent adverse impacts to ESHA from the construction of the proposed residence. However, Section 30010 provides that the Commission cannot construe the Coastal Act as authorizing the denial of a permit in a manner that will take private property for public use. To avoid a "taking" of private property, the Commission must allow a reasonable residential development on the applicant's parcel. The total proposed development area for the project is approximately 4,800 sq. ft. The development has been sited and designed to minimize landform alteration, removal of ESHA, and visual impacts to the maximum extent possible, while still providing residential use of the site.

The proposal also includes after-the-fact approval of Certificate of Compliance #88-0083 to legalize the subject lot. The subject 1.94-acre lot was created in 1961 by deed in a two-lot subdivision. Prior to this, the underlying lot of the 1961 subdivision had been created by deed in 1958 through a five-lot subdivision. The 1958, five-lot subdivision was not property permitted pursuant to the requirements of the Subdivision Map Act and Los Angeles County Planning and Zoning Codes. The Commission has previously approved permits for development on three of the other parcels involved in the original 1958 five-lot subdivision. In addition, the subject parcel is not in common ownership with the other contiguous parcel created from the parent parcel.

The standard of review for the proposed permit application is the Chapter Three policies of the Coastal Act. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

**STAFF RECOMMENDATION:**

**I. Approval with Conditions**

The staff recommends that the Commission adopt the following resolution:

**MOTION:**        *I move that the Commission approve Coastal Development Permit No. 4-04-121 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**Standard Conditions**

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

**5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### **III. Special Conditions**

#### **1. Plans Conforming to Geologic Recommendations**

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the submitted geologic reports: "Preliminary Geologic and Soils Engineering Investigation, Proposed Single Family Residence, APN 4455-034-035, Las Virgenes Road, Malibu, CA" prepared by GeoConcepts, Inc on October 5, 2004 and "Percolation Feasibility Study and Hydrogeological Evaluation Report for Proposed Sewage Disposal System via Seepage Pit, APN 4455-034-035, 1520 Las Virgenes Road, Malibu Area" prepared by John Helms in August 6, 2004 and subsequent addendums. These recommendations, including those concerning foundations, grading, site design, sewage disposal, and drainage, shall be incorporated into all final design and construction, and must be reviewed and approved by the consultant prior to commencement of development.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, sewage disposal, and drainage. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

#### **2. Drainage and Polluted Runoff Control Plans**

Prior to the issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and written approval, two sets of final drainage and runoff control plans, including supporting calculations. The final plans shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The plans shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85<sup>th</sup> percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.

- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30<sup>th</sup> each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

### **3. Landscaping and Erosion Control Plans**

Prior to issuance of a Coastal Development Permit, the applicant shall submit two sets of final landscaping and erosion control plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the criteria set forth below. All development, including the landslide remediation area, shall conform to the approved landscape and erosion control plans.

#### **A. Landscaping Plan**

- (1) All graded and disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation, all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled *Recommended List of Plants for Landscaping in the Santa Monica Mountains*, dated February 5, 1996. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property.
- (2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. All areas previously disturbed during creation of the existing dirt access road or temporarily disturbed during construction shall be weeded of non-native plants and planted with native plants in accordance with the densities permitted by the fire department approved Final Fuel Modification Plan, dated July 15, 2005,

for the residence. Plantings should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Native seeds used for revegetation shall be collected from areas as close to the restoration and landscaping sites as possible. During grading and remediation activities, topsoil, where possible, shall be separated from other soil and, upon completion of grading or remediation activities, replaced or used on other restoration or revegetation sites. Revegetation and planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. Temporary irrigation systems may be used until the plants are established, as determined by the habitat restoration consultant, and as approved by the consulting civil and geotechnical engineers, but in no case shall the irrigation systems be in place longer than two (2) years.

- (3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- (4) The permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.
- (5) Vegetation within 50 feet of the proposed house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with the approved long-term Final Fuel Modification Plan, dated July 15, 2005. Pursuant to this approved plan, no thinning shall occur southwest of Las Virgenes Canyon Road. Irrigated lawn, turf and ground cover planted within the fifty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.
- (6) Fencing of the entire property is prohibited. Fencing shall extend no further than the building pad area as generally shown on **Exhibit 5**. The fencing type and location shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in Special Condition Nine (9) below.
- (7) The use of rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum Bromadiolone or Diphacinone) shall not be used.
- (8) Vertical landscape elements shall be planted around the proposed residence to soften views of the development from Las Virgenes Canyon Road. All landscape elements shall be native/drought resistant plants.

**B. Interim Erosion Control Plan**

- (1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
- (2) The plan shall specify that grading shall take place only during the dry season (April 1 – October 31). This period may be extended for a limited period of time if the situation warrants such a limited extension, if approved by the Executive Director. The applicant shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. These erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
- (3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

### **C. Monitoring**

Five (5) years from the date of occupancy, the applicant shall submit for the review and approval of the Executive Director a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that assesses the on-site landscaping and certifies whether it is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage. Failure to comply with deadlines to submit the landscape monitoring reports will result in a violation of the subject permit and the commencement of enforcement proceedings, including potential judicial action and administrative orders, as well as the recordation of a notice of violation in the chain of title for the property.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan

approved pursuant to these permits, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The supplemental landscaping plan must be prepared by a licensed landscape architect or qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee shall implement the remedial measures specified in the approved supplemental landscape plan.

#### **4. Assumption of Risk**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from landslide, erosion, earth movement, and wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement.

#### **5. Removal of Natural Vegetation**

Removal of natural vegetation for the purpose of fuel modification for the development approved pursuant to this permit shall not commence until the local government has issued a building or grading permit(s) for the development approved pursuant to this Coastal Development Permit.

#### **6. Future Development Restriction**

This permit is only for the development described in Coastal Development Permit 4-04-121. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6) , the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit 4-04-121. Accordingly, any future structures, future improvements, or change of use to the permitted structures authorized by these permits, including but not limited to any grading, clearing or other disturbance of vegetation and fencing, other than as provided for in the approved fuel modification/landscape plan prepared pursuant to Special Condition Three (3), shall require an amendment to Coastal Development Permit 4-04-121 from the Commission or shall require additional coastal development permits from the Commission or from the applicable certified local government.

#### **7. Habitat Impact Mitigation**



Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a map delineating all areas of chaparral habitat (ESHA) that will be disturbed by the proposed development, including by fuel modification requirements on the project site (based on the final fuel modification plan approved by the Los Angeles County Fire Department). The chaparral areas on the site shall be delineated on a detailed map, to scale, illustrating the subject parcel boundaries. The delineation map shall indicate the total acreage for all chaparral on site that will be impacted by the proposed development, including the fuel modification areas. The existing Las Virgenes Road easement area is excluded from the total acreage of ESHA impacted. A qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains shall prepare the delineation.

Mitigation shall be provided for impacts to the chaparral ESHA from the proposed development and fuel modification requirements by one of the three following habitat mitigation methods:

#### **A. Habitat Restoration**

##### **1) Habitat Restoration Plan**

Prior to the issuance of the Coastal Development Permit, the applicant shall submit a habitat restoration plan, for the review and approval of the Executive Director, for an area of degraded chaparral habitat equivalent to the area of chaparral and coastal sage scrub ESHA impacted by the proposed development and fuel modification area. The habitat restoration area may either be onsite or offsite within the coastal zone in the City of Malibu or in the Santa Monica Mountains. The habitat restoration area shall be delineated on a detailed site plan, to scale, that illustrates the parcel boundaries and topographic contours of the site. The habitat restoration plan shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains, and shall be designed to restore the area in question for habitat function, species diversity and vegetation cover. The restoration plan shall include a statement of goals and performance standards, revegetation and restoration methodology, and maintenance and monitoring provisions. If the restoration site is offsite the applicant shall submit written evidence to the Executive Director that the property owner agrees to the restoration work, maintenance and monitoring required by this condition and agrees not to disturb any native vegetation in the restoration area.

The applicant shall submit, on an annual basis for five years, a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the performance standards outlined in the restoration plan and describing the revegetation, maintenance and monitoring that was conducted during the prior year. The annual report shall include recommendations for mid-course corrective measures. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has been in

part, or in whole, unsuccessful, based on the approved goals and performance standards, the applicant shall submit a revised or supplemental restoration plan with maintenance and monitoring provisions, for the review and approval of the Executive Director, to compensate for those portions of the original restoration plan that were not successful. A report shall be submitted evaluating whether the supplemental restoration plan has achieved compliance with the goals and performance standards for the restoration area. If the goals and performance standards are not met within 10 years, the applicant shall submit an amendment to the coastal development permit for an alternative mitigation program. Failure to comply with deadlines to submit the Habitat Restoration Monitoring Reports will result in a violation of the subject permit and the commencement of enforcement proceedings, including potential judicial action and administrative orders, as well as the recordation of a notice of violation in the chain of title for the property.

The habitat restoration plan shall be implemented prior to occupancy of the residence.

## 2) Open Space Deed Restriction

No development, as defined in Section 30106 of the Coastal Act shall occur in the habitat restoration area, as shown on the habitat restoration site plan, required pursuant to (A)(1) above.

Prior to the issuance of the coastal development permit, the owner of the habitat restoration area shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development and designating the habitat restoration area as open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of both the parcel and the open space area/habitat restoration area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

## 3) Performance Bond

Prior to the issuance of the permit, the applicant shall post performance bonds to guarantee implementation of the restoration plan as follows: a) one equal to the value of the labor and materials; and b) one equal to the value of the maintenance and monitoring for a period of 5 years. Each performance bond shall be released upon satisfactory completion of items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the Coastal Commission may collect the security and complete the work on the property.

## **B. Habitat Conservation**

Prior to issuance of the Coastal Development Permit, the applicant shall execute and record an open space deed restriction in a form and content acceptable to the Executive Director, over a parcel or parcels containing chaparral and coastal sage scrub ESHA. The chaparral and coastal sage scrub ESHA located on the mitigation parcel or parcels must be of equal or greater area than the ESHA area impacted by the proposed development, including the fuel modification/brush clearance areas. No development, as defined in Section 30106 of the Coastal Act, shall occur on the mitigation parcel(s) and the parcel(s) shall be preserved as permanent open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of the parcel or parcels. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

Prior to occupancy of the residence the applicant shall submit evidence, for the review and approval of the Executive Director, that the recorded documents have been reflected in the Los Angeles County Tax Assessor Records.

If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage may be used to provide habitat impact mitigation for other development projects that impact like ESHA.

### **C. Habitat Impact Mitigation Fund**

Prior to the issuance of the Coastal Development Permit, the applicant shall submit evidence, for the review and approval of the Executive Director, that compensatory mitigation, in the form of an in-lieu fee, has been paid to the Mountains Recreation and Conservation Authority to mitigate adverse impacts to chaparral and coastal sage scrub habitat ESHA. The fee shall be calculated as follows:

#### **1) Development Area, Irrigated Fuel Modification Zones**

The in-lieu fee for these areas shall be \$12,000 per acre within the development area and any required irrigated fuel modification zones. The total acreage shall be based on the map delineating these areas required by this condition.

#### **2) Non-irrigated Fuel Modification Zones**

The in-lieu fee for non-irrigated fuel modification areas shall be \$3,000 per acre. The total acreage shall be based on the map delineating these areas required by this condition.

Prior to the payment of any in-lieu fee to the Mountains Recreation and Conservation Authority, the applicant shall submit, for the review and approval of the Executive Director, the calculation of the in-lieu fee required to mitigate adverse impacts to chaparral and coastal sage scrub habitat ESHA, in accordance with this condition. After review and approval of the fee calculation, the fee shall be paid to the Mountains

Recreation and Conservation Authority. The fee shall be used for the acquisition or permanent preservation of chaparral habitat in the Santa Monica Mountains coastal zone.

## **8. Lighting Restrictions**

- A. The only outdoor night lighting allowed on the subject parcel is limited to the following:
- 1) The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
  - 2) Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60-watt incandescent bulb.
  - 3) The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60-watt incandescent bulb.
- B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

## **9. Structural Appearance**

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of coastal development permit 4-04-121. The palette samples shall be presented in a format not to exceed 8 1/2" x 11" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, retaining walls, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones). Including shades of green, brown and gray with no white or light shades, galvanized steel, and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and materials authorized pursuant to this special condition. Alternative colors or materials for future repainting, resurfacing, or new windows may only be applied to the structures authorized by Coastal Development Permit 4-04-121 if such changes are specifically authorized by the Executive Director as complying with this special condition.

## **10. Removal of Excess Excavated Material**

Prior to the issuance of the Coastal Development Permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of material.

## **11. Deed Restriction**

Prior to the issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to these permits, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of these permits as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## **12. Cumulative Impact Mitigation**

The applicant shall mitigate the cumulative impacts of the subject development with respect to build-out of the Santa Monica Mountains by ensuring that development rights for residential use have been extinguished on the equivalent of one (1) building site in the Santa Monica Mountains Coastal Zone through a Transfer of Development Credit (TDC) transaction.

Prior to the issuance of the Coastal Development Permit, the applicant shall complete the following steps to ensure that the development rights are extinguished on the lot(s) equivalent to one Transfer of Development Credit (TDC):

- 1) The applicant shall provide, for the review and approval of the Executive Director, evidence that the TDC lot(s) to be extinguished qualify with the criteria for TDC donor lots established in past Commission actions.
- 2) No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur on the TDC lot(s) except for:

Brush clearance required by Los Angeles County for permitted structures on adjacent parcels; planting of native vegetation and other restoration activities, if

approved by the Commission in a coastal development permit; construction and maintenance of public hiking trails, if approved by the Commission in a coastal development permit; and existing easements for roads, trails, and utilities

- 3) The applicant shall execute and record a document in a form and content acceptable to the Executive Director, granting or irrevocably offering to dedicate, an open space easement over the TDC lot(s) to be restricted for TDC credit for the purpose of development right extinguishment. The recorded easement document shall include a formal legal description and graphic depiction, prepared by a licensed surveyor, of the entire parcel(s). The recorded document shall reflect that development in the parcel(s) is restricted as set forth in this permits condition. The grant of easement, or irrevocable offer to dedicate, shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. Such grant of easement or offer to dedicate shall run with the land in favor of the People of the State of California, binding all successors and assigns, and any such offer to dedicate shall be irrevocable.
- 4) The applicant shall provide evidence, for the review and approval of the Executive Director, that the TDC lot(s) extinguished in Section 3 above have been combined with an adjacent lot(s) that is developed or developable and held in common ownership. The extinguished lot(s) shall be combined with the developed or developable lot(s) through a lot merger consistent with applicable local government lot merger ordinances. The combined lot shall be considered and treated as a single parcel of land for all purposes with respect to the lands included therein, including but not limited to sale, conveyance, taxation, or encumbrance.
- 5) The applicant shall submit, for the review and approval of the Executive Director, a title report for the combined lot created by merging the TDC lot(s) and the developed or developable lot(s) that demonstrates that the open space easement grant or offer to dedicate required in Section 3 above is on the title.

### **13. Condition Compliance**

Within 180 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

Failure to comply with deadlines to submit the landscape monitoring and habitat restoration reports, or any other requirement and condition of this permit, will result in a violation of the subject permit and the commencement of enforcement proceedings,

including potential judicial action and administrative orders, as well as the recordation of a notice of violation in the chain of title for the property.

#### **IV. Findings and Declarations**

The Commission hereby finds and declares:

##### **A. Project Description and Background**

The applicant proposes to construct a two story, 34 ft. high 4,452 sq. ft. single-family residence with attached 595 sq. ft. garage, septic system, retaining walls, paved driveway, access stairway, and 3,713 cu. yds. of grading (3,650 cu. yds. cut; 63 cu. yds. fill; 3,587 cu. yds. export) (**Exhibit 4-8**). The application also includes after-the-fact approval of the subject parcel that was created pursuant to Certificate of Compliance # 88-0083 (**Exhibit 3**) and restoration of an unpermitted dirt road back to natural conditions.

The subject lot is a vacant 1.94-acre parcel (Assessor's Parcel Number 4455-034-035) located on the northeast side of Las Virgenes Road in the Santa Monica Mountains (**Exhibit 1**). The areas surrounding the parcel are characterized by natural hillside covered predominantly with undisturbed chaparral and coastal sage scrub vegetation. Undeveloped lots located to the west of the subject parcel across Las Virgenes Road are owned by the Santa Monica Mountains Recreation Conservation Authority and border Malibu Creek State Park. Several densely developed structures associated with a Hindu temple, Soka University, and single family residences are located approximately 150 feet northwest of the subject property (**Exhibit 9**). Additionally, mobile homes occupy a predominantly undeveloped lot northeast of the site. The areas east and south of the site are undeveloped.

The subject property is comprised of moderate to very steep sloping hillside terrain situated on the south flank of a northwest trending ridge. The parcel is covered with relatively undisturbed chaparral vegetation, with the exception of a 30-foot wide corridor adjacent to Las Virgenes Road and a dirt access road that leads from Las Virgenes Road to the northern property line of the parcel (**Exhibits 9 and 10**). The 30-foot wide area immediately adjacent to Las Virgenes Road has been cleared for the construction and maintenance of Las Virgenes Road and is held in easement by the County of Los Angeles. Commission staff note that aerial photographs of the site taken in 1977 show the property to be undeveloped and fully vegetated with chaparral vegetation, with the exception of the 30-foot wide Las Virgenes Road easement area. Subsequent aerial photos from 1994 and 2001 show the 30-foot wide easement area, as well as the dirt road that spans the property today. This dirt road is approximately 5 feet wide in most locations and overgrown with non-native grasses and thistle. A branch of this road leads to the proposed building site, where an approximately 20 to 30-foot wide area has been graded and cleared. The applicant has not provided an estimate of the amount of grading that was carried out to create the road. However, staff would note that there are

no significant cut or fill slopes associated with the road, so it appears that only a minor amount of grading (along with vegetation removal) was necessary to construct it. The landowners at the time of construction never secured a coastal development permit for the dirt access road. The applicant is proposing, as part of the subject application, to restore the dirt road back to natural conditions by weeding all non-native vegetation associated with the road and replanting the area with native vegetation as outlined in the approved Final Fuel Modification Plan for the proposed residence.

The proposed residence will be located on the existing 30-foot wide cleared flat area approximately 100 feet from Las Virgenes Road. The residence will be cut into the hillside and will require 1,440 cu. yds of grading (all cut) to construct the residence and remediate slopes behind the residence. The area between the proposed building pad and Las Virgenes Road is very steep. The applicant, therefore, will be required by the Fire Department to provide an emergency access stairway from the residence to Las Virgenes Road. The applicant is proposing an approximately 270-foot long winding driveway to the residence from Las Virgenes Road that follows the existing unpermitted dirt access road on the property. This driveway will require 1,913 cu. yds of grading (1850 cu. yds. cut; 63 cu. yds fill), several retaining walls, and remediation (360 cu yds of grading) of steep slopes surrounding the driveway. The applicant proposes to replant all slope remediation areas with native vegetation following construction. In addition to the residence and driveway, a septic tank is proposed immediately adjacent to the house. The proposed septic seepage pit system will be located 100 feet upslope of the house on the upper portion of the existing unpermitted dirt road. According to the applicant's geologist, this location is the closest area to the house suitable for a seepage pit system.

The applicant has submitted a Final Fuel Modification Plan for the proposed residence that has been approved by the Los Angeles County Fire Department (**Exhibit 4**). This plan calls for clearance and thinning of vegetation 200 feet south, east, and north of the proposed residence. To the west, vegetative thinning and clearance will only occur from the residence to Las Virgenes Road. No vegetative thinning will be required across Las Virgenes Road on State parkland. Due to the retaining wall surrounding the residence and driveway, the fire department has allowed the applicant to limit vegetative clearance and irrigation (Zone A and B) to within 50 feet of the residence. Thinning of vegetation only will, therefore, occur from this 50 foot zone out to 200 feet from the residence. Due to the small size of the subject parcel, fuel modification for the proposed residence will cover all but a small section of the northeast corner of the property.

The subject 1.94-acre parcel was created by deed in 1961 as part of a two lot subdivision (**Exhibits 2 and 3**). Prior to this, the underlying lot of the 1961 subdivision had been created by deed in 1958 through a five-lot subdivision. The 1958 five lot subdivision was not properly permitted pursuant to the requirements of the Subdivision Map Act and Los Angeles County Planning and Zoning Codes in effect at the time. In 1988, the County of Los Angeles issued a Conditional Certificate of Compliance (CC 88-0083) on the property to "legalize" the lot pursuant to the Subdivision Map Act after



investigations of the 1958 subdivision showed it to be a “major violation” of the Subdivision Map Act. The 1988 Certificate of Compliance which “legalized” this lot pursuant to the Subdivision Map Act is considered a form of land division and, therefore, requires a coastal development permit, pursuant to the provisions of the Coastal Act. However, the landowners at the time failed to secure a coastal development permit for the underlying subdivision which created the parcel subject to the above referenced Certificate of Compliance. The applicant is now requesting after-the-fact approval for the creation of the subject parcel through this coastal development permit, which is discussed in detail below (Section E Cumulative Impacts).

## **B. Geologic and Wildfire Hazard**

The proposed development is located in the Santa Monica Mountains, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains area include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wildfires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

Section **30253** of the Coastal Act states in pertinent part that new development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

## **Geology**

Section 30253 of the Coastal Act mandates that new development be sited and designed to provide geologic stability and structural integrity, and minimize risks to life and property in areas of high geologic, flood, and fire hazard. The applicant has submitted the “Preliminary Geologic and Soils Engineering Investigation, Proposed Single Family Residence, APN 4455-034-035, Las Virgenes Road, Malibu, CA” prepared by GeoConcepts, Inc on October 5, 2004 and the “Percolation Feasibility Study and Hydrogeological Evaluation Report for Proposed Sewage Disposal System via Seepage Pit, APN 4455-034-035, 1520 Las Virgenes Road, Malibu Area” prepared by John Helms in August 6, 2004 and subsequent addendums. These reports address the geologic conditions on the site, including drainage, subsurface conditions, groundwater, landslides, faulting, and seismicity.

The subject property is situated on the south flank of a northwest trending ridge within the northeast portion of the Santa Monica Mountains. The property consists of ascending slopes to the north and east that have a general gradient of 1.5:1 or less. Drainage at the site is by sheet flow. The site is primarily underlain by volcanic bedrock and native soils.

The geologic consultant, GeoConcepts, Inc., has found the geology of the proposed project site to be suitable for the construction of a single-family residence. The geologic and geotechnical engineering consultants in their geologic and engineering report that:

*It is the finding of this corporation, based upon the subsurface data, that the proposed project will be safe from landslide, settlement or slippage and will not adversely affect adjacent property, provided this corporation's recommendations and those of the County of Los Angeles and Uniform Building Code are followed and maintained.*

The engineering geologic and geotechnical consultant conclude that the proposed developments are feasible and will be free from geologic hazard provided their recommendations are incorporated into the proposed development. The geologic and geotechnical reports contains several recommendations to be incorporated into project construction, design, drainage, foundations, and sewage disposal to ensure the stability and geologic safety for the proposed project site and adjacent properties.

In order to ensure that the recommendations of the geologic consultant have been incorporated into all proposed development, the Commission, as specified in **Special Condition One (1)**, requires the applicant to incorporate the recommendations cited in the geotechnical reports into all final design and construction plans. Final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed developments, as approved by the Commission, which may be recommended by the consultant, shall require an amendment to the permit or a new coastal development permit.

The Commission finds that controlling and diverting run-off in a non-erosive manner from the proposed structures, impervious surfaces, and building pad will also add to the geologic stability of the project site. Therefore, in order to minimize erosion and ensure stability of the project site, and to ensure that adequate drainage and erosion control is included in the proposed development, the Commission requires the applicants to submit drainage and erosion control plans certified by the geotechnical engineer, as specified in **Special Conditions Two (2) and Three (3)**.

Further, the Commission finds that landscaping of graded and disturbed areas on the subject site will serve to stabilize disturbed soils, reduce erosion and thus enhance and maintain the geologic stability of the site. Therefore, **Special Condition Three (3)** requires the applicant to submit landscaping plans certified by the consulting geotechnical engineer as in conformance with their recommendations for landscaping of the project site. **Special Condition Three (3)** also requires the applicant to utilize and

maintain native and noninvasive plant species compatible with the surrounding area for landscaping the project site.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/foilage weight. The Commission notes that non-native and invasive plant species with high surface/foilage weight and shallow root structures do not serve to stabilize slopes and that such vegetation results in potential adverse effects to the stability of the project site. Native species, alternatively, tend to have a deeper root structure than non-native and invasive species, and once established aid in preventing erosion. Therefore, the Commission finds that in order to ensure site stability, all slopes and disturbed and graded areas of the site shall be landscaped with appropriate native plant species, as specified in **Special Condition Three (3)**. Additionally, the restoration of the unpermitted dirt road spanning the property, shall, according to Special Condition Three (3), include weeding of non-native plants and planting of native species as allowed in the approved Final Fuel Modification Plan for the proposed residence.

In addition, to ensure that excess excavated material is moved off site so as not to contribute to unnecessary landform alteration, the commission finds it necessary to require the applicant to dispose of the material at an appropriate disposal site or to a site that has been approved to accept material, as specified in **Special Condition Ten (10)**.

Furthermore, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition Five (5)**. This restriction specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. The limitation imposed by **Special Condition Five (5)** avoids loss of natural vegetative coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

The Commission notes that because there remains some inherent risk in building in the Santa Monica Mountains, which are prone to landslides and destruction from wildfire. The Commission can only approve the project if the applicant assumes the liability from the associated risks as required by **Special Condition Four (4)**. The assumption of risk will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same.

**Special Condition Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restriction on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restriction are imposed on the subject property.

The Commission finds that the proposed project, as conditioned, will serve to minimize potential geologic hazards of the project site and adjacent properties, as outlined in §30253 of the Coastal Act

## **Wildfire**

The proposed project is located in the Santa Monica Mountains, an area subject to an extraordinary potential for damage or destruction from wild fire. Typical vegetation in the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, *Terrestrial Vegetation of California*, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for, frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from these associated risks. Through **Special Condition Four (4)**, the assumption of risk, the applicant acknowledges the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. Moreover, through acceptance of Special Condition No. 4, the applicant also agrees to indemnify the Commission, its officers, agents and employees against any and all expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project.

For the reasons set forth above, the Commission finds that, as conditioned, the proposed project is consistent with §30253 of the Coastal Act.

## **C. Environmentally Sensitive Habitat Areas**

Section **30230** of the Coastal Act states that:

***Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.***

Section 30231 states:

***The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.***

Section 30240 states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.***
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

Section 30107.5 of the Coastal Act, defines an environmentally sensitive area as:

***"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.***

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through, among other means, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Sections 30107.5 and 30240 of the Coastal Act state that environmentally sensitive habitat areas must be protected against disruption of habitat values. Therefore, when considering any area, such as the Santa Monica Mountains, with regard to an ESHA determination one must focus on three main questions:

- 1) Is a habitat or species rare or especially valuable?
- 2) Does the habitat or species have a special nature or role in the ecosystem?

- 3) Is the habitat or species easily disturbed or degraded by human activities and developments?

The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Monica Mountains is itself rare and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, habitat areas that provide important roles in that ecosystem are especially valuable and meet the second criterion for the ESHA designation. In the Santa Monica Mountains, coastal sage scrub and chaparral have many important roles in the ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. For these and other reasons discussed in **Exhibit 11**, which is incorporated herein, the Commission finds that large contiguous, relatively pristine stands of coastal sage scrub and chaparral in the Santa Monica Mountains meet the definition of ESHA. This is consistent with the Commission's past findings on the Malibu LCP<sup>1</sup>.

For any specific property within the Santa Monica Mountains, it is necessary to meet three tests in order to assign the ESHA designation. First, is the habitat properly identified, for example as coastal sage scrub or chaparral? Second, is the habitat undeveloped and otherwise relatively pristine? Third, is the habitat part of a large, contiguous block of relatively pristine native vegetation?

The subject site is a 1.94-acre hillside lot located on the south flank of a northwest trending ridge within the northeast portion of the Santa Monica Mountains. Large areas of undisturbed chaparral habitat surround the subject parcel, particularly to the west and south. Large open space areas owned by Santa Monica Mountains Recreation Conservation Authority border the property to the west, across Las Virgenes Road. Development associated with a Hindu temple, Soka University, mobile homes, and a single family residence are located north and northeast of the site.

The applicant has submitted a Biological Study for the property, prepared by Andrew McGinn Forde in February 2005. In this report, the biological consultant describes the subject parcel as primarily vegetated with a native *Ceanothus* series of chamise chaparral that has been disturbed due to fire within the last 10 to 20 years. Vegetation on the site is a patchwork of non-native and native plants, with "non-native plants [primarily thistle and grasses] on the property generally limited to the unpaved roads" onsite. As discussed previously, these roads were created after 1977 without approval or coastal development permit from the Coastal Commission. Aerial photographs taken in 1977 show the site to be fully vegetated in what appears to be chaparral vegetation similar to the native species currently found on most portions of the property. The photograph also shows evidence of vegetative clearance at the 30-foot wide Las

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<sup>1</sup> Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

Virgenes Road easement area on the property. This clearance area appears to pre-date the Coastal Act.

Due to the important ecosystem role of chaparral in the Santa Monica Mountains (detailed in **Exhibit 11**), and the fact that the subject parcel is relatively undisturbed, with the exception of the existing access road and cleared road easement area, and part of a large, unfragmented block of habitat, the Commission finds that the chaparral habitat on and surrounding the subject site meets the definition of ESHA under the Coastal Act. The Commission also finds that had grading and vegetative clearance not occurred to create the existing unpermitted road on the property, these areas would also be vegetated with native chaparral vegetation and likely meet the definition of ESHA under the Coastal Act.

As explained above, the project site and the surrounding area (excluding the existing 30-foot wide Las Virgenes Road easement area that was cleared prior to the effective date of the Coastal Act) constitute an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5. Section 30240 requires that “environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.” Section 30240 restricts development on the parcel to only those uses that are dependent on the resource. The applicant proposes to construct a single-family residence on the parcel. The majority of the development, with the exception of a small portion of the lower driveway, is proposed to be located in areas currently supporting chaparral ESHA or on the existing unpermitted dirt road on the property, which likely supported chaparral ESHA before creation of the road. As single-family residences do not have to be located within ESHAs to function, the Commission does not consider single-family residences to be a use dependent on ESHA resources. Application of Section 30240, by itself, would require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

However, the Commission must also consider Section 30010, and the Supreme Court decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner that will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a “taking” was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council*. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Another factor that should be considered is the

extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable economic use, the Commission may be required to allow some development even where a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, Section 30240 of the Coastal Act cannot be read to deny all economically beneficial or productive use of land because Section 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner.

In the subject case, the applicant purchased the property in May, 2003 for approximately \$250,000. The parcel was designated in the County's certified Land Use Plan in 1986 for residential use as Rural Land I, which allows for residential development at a maximum density of one dwelling unit per 10 acres. At the time the applicant purchased the parcel, the County's certified Land Use Plan did not designate the vegetation on the site as ESHA. Based on this fact, along with the presence of existing and approved residential development on nearby parcels, the applicant had reason to believe that they had purchased a parcel on which they would be able to build a residence.

The Commission finds that in this particular case, other allowable uses for the subject site, such as a recreational park or a nature preserve, are not feasible and would not provide the owner an economic return on the investment. The parcel is 1.94 acres and there are other residential developments to the northwest of the site. Public parkland and open space has been acquired in the vicinity but there is currently not an offer to purchase the property from any public park agency. The Commission thus concludes that in this particular case there is no viable alternative use for the site other than residential development. The Commission finds, therefore, that outright denial of all residential use would interfere with reasonable investment-backed expectations and deprive the property of all reasonable economic use.

Next the Commission turns to the question of nuisance. There is no evidence that construction of a residence would create a nuisance under California law. Other houses have been constructed in similar situations in chaparral habitat in Los Angeles County, apparently without the creation of nuisances. The County's Health Department has not reported evidence of septic system failures. In addition, the County has reviewed and approved the applicant's proposed septic system, ensuring that the system will not create public health problems. Furthermore, the use that is proposed is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance. In conclusion, the Commission finds that a residential project can be allowed to permit the applicant a reasonable economic use of their property consistent with Section 30010 of the Coastal Act.



While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to take their property, this section does not authorize the Commission to avoid application of the policies of the Coastal Act, including Section 30240, altogether. Instead, the Commission is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the Act. Therefore, in this situation, the Commission must still comply with Section 30240 by avoiding impacts that would disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without taking the property.

As discussed above, the proposed development will be approved within ESHA in order to provide an economically viable use. Siting and design alternatives have been considered in order to identify the alternative that can avoid and minimize impacts to ESHA to the maximum extent feasible. In this case, very steep terrain and a County road easement on the property limit the potential locations for siting of a residence. The proposed building site is located on a 30-foot wide area that has been cleared and graded in association with the unpermitted road on the subject property. This site is 100 feet from Las Virgenes Road on the only relatively flat portion of the site adjacent to Las Virgenes Road that is not located in the County road easement. Any feasible alternative location on the site for a residence would include additional grading and the removal of more native vegetation.

The proposed residence, garage, septic system, septic tank, access stairway, a portion of the driveway, and the fuel modification area required for the residence will be located in chaparral habitat considered ESHA or within the unpermitted dirt road area that would have been considered ESHA if it had not been cleared without the benefit of a Coastal Development Permit. The garage is incorporated into the main residence, thereby minimizing the total fuel modification area necessary for the project. The proposed driveway also follows the existing dirt road. Additionally, the applicant has secured Los Angeles Fire Department Fuel Modification Plans for the residence that limit the irrigated Zone B, which would normally extend to 100 feet from the residence, to 50 feet from the residence. Zone C, where vegetation is thinned, but not cleared, would be extended to 150 feet from Zone B instead of the normal 100 feet. Expansion of Zone C and reduction of Zone B reduces impacts to native vegetation from fuel modification. Additionally, the applicant has proposed restoration of those portions of the unpermitted dirt road outside of the building pad area once construction is complete. These areas will be weeded of non-native plants and planted with native vegetation according to the approved Fuel Modification Plan for the residence.

In past permit actions, the Commission has limited development within or adjacent to chaparral ESHA to a 10,000 sq. ft. development area, excluding driveways and fire turn around areas. In this case, not including the area of the driveway and stairway, or the proposed slope remediation, the proposed development area for the residence and associated improvements is approximately 4,800 sq. ft. This estimate does not include that portion of the existing dirt road on the property outside of the main building pad as the applicant has proposed restoration of these areas to natural conditions. **Special**

**Condition Three (3)** ensures completion of these restoration activities consistent with other landscaping requirements for the property. Therefore, the development area proposed by the applicant conforms to the maximum development area of 10,000 sq. ft. that the Commission has typically allowed in similar situations on sites containing ESHA. However, given the location of ESHA on the site, there will still be significant impacts to ESHA resulting from construction of the residence, septic system, garage, stairway, driveway, and fuel modification area around the residence. The following discussion of ESHA impacts from new development and fuel modification is based on the findings of the Malibu LCP<sup>2</sup>.

Fuel modification is the removal or modification of combustible native or ornamental vegetation. It may include replacement with drought tolerant, fire resistant plants. The amount and location of required fuel modification would vary according to the fire history of the area, the amount and type of plant species on the site, topography, weather patterns, construction design, and siting of structures. There are typically three fuel modification zones applied by the Fire Department:

Zone A (Setback Zone) is required to be a minimum of 20 feet beyond the edge of protected structures. In this area native vegetation is cleared and only ground cover, green lawn, and a limited number of ornamental plant species are allowed. This zone must be irrigated to maintain a high moisture content.

Zone B (Irrigated Zone) is usually required to extend from the outermost edge of Zone A to a maximum of 80 feet. In this area ground covers may not extend over 18 inches in height. Some native vegetation may remain in this zone if they are adequately spaced, maintained free of dead wood and individual plants are thinned. This zone must be irrigated to maintain a high moisture content.

Zone C (Thinning Zone) is usually required to extend from the outermost edge of Zone B up to 100 feet. This zone would primarily retain existing native vegetation, with the exception of high fuel species such as chamise, red shank, California sagebrush, common buckwheat and sage. Dead or dying vegetation must be removed and the fuel in existing vegetation reduced by thinning individual plants.

Thus, the combined required fuel modification area around structures can extend up to a maximum of 200 feet. If there is not adequate area on the project site to provide the required fuel modification for structures, then brush clearance may also be required on adjacent parcels.

Notwithstanding the need to protect structures from the risk of wildfire, fuel modification results in significant adverse impacts that are in excess of those directly related to the development itself. Within the area next to approved structures (Zone A), all native vegetation must be removed and ornamental, low-fuel plants substituted. In Zone B, most native vegetation will be removed or widely spaced. Finally, in Zone C, native

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<sup>2</sup> Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

vegetation may be retained if thinned, although particular high-fuel plant species must be removed (Several of the high fuel species are important components of the coastal sage scrub community). In this way, for a large area around any permitted structures, native vegetation will be cleared, selectively removed to provide wider spacing, and thinned.

Obviously, native vegetation that is cleared and replaced with ornamental species, or substantially removed and widely spaced will be lost as habitat and watershed cover. Additionally, thinned areas will be greatly reduced in habitat value. Even where complete clearance of vegetation is not required, the natural habitat can be significantly impacted, and ultimately lost. For instance, in coastal sage scrub and chaparral habitat, the natural soil coverage of the canopies of individual plants provides shading and reduced soil temperatures. When these plants are thinned, the microclimate of the area will be affected, increasing soil temperatures, which can lead to loss of individual plants and the eventual conversion of the area to a dominance of different non-native plant species. The areas created by thinning between shrubs can be invaded by non-native grasses that will over time out-compete native species.

For example, undisturbed coastal sage scrub and chaparral vegetation typical of coastal canyon slopes, and the downslope riparian corridors of the canyon bottoms, ordinarily contains a variety of tree and shrub species with established root systems. Depending on the canopy coverage, these species may be accompanied by understory species of lower profile. The established vegetative cover, including the leaf detritus and other mulch contributed by the native plants, slows rainfall runoff from canyon slopes and staunches silt flows that result from ordinary erosional processes. The native vegetation thereby limits the intrusion of sediments into downslope creeks. Accordingly, disturbed slopes where vegetation is either cleared or thinned are more directly exposed to rainfall runoff that can therefore wash canyon soils into down-gradient creeks. The resultant erosion reduces topsoil and steepens slopes, making revegetation increasingly difficult or creating ideal conditions for colonization by invasive, non-native species that supplant the native populations.

The cumulative loss of habitat cover also reduces the value of the sensitive resource areas as a refuge for birds and animals, for example by making them—or their nests and burrows—more readily apparent to predators. The impacts of fuel clearance on bird communities was studied by Stralberg who identified three ecological categories of birds in the Santa Monica Mountains: 1) local and long distance migrators (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla, black-headed grosbeak), 2) chaparral-associated species (Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species (mourning dove, American crow, Western scrub-jay, Northern mockingbird)<sup>3</sup>. It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the

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<sup>3</sup> Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: a Santa Monica Mountains case study. Pp. 125–136 in Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (eds.). *2nd interface between ecology and land development in California*. U.S. Geological Survey, Sacramento, California.

abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and “edge” many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral<sup>4</sup>.

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms “super colonies” that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area<sup>5</sup>. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat<sup>6</sup>. These native ants are the primary food resource for the native coast horned lizard, a California “Species of Special Concern.” As a result of Argentine ant invasion, the coast horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments<sup>7</sup>. In addition to specific effects on the coast horned lizard, there are other Mediterranean habitat ecosystem processes that are impacted by Argentine ant invasion through impacts on long-evolved native ant-plant mutualisms<sup>8</sup>. The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod predator species are seen and more exotic arthropod species are present than in undisturbed habitats<sup>9</sup>.

Studies in the Mediterranean vegetation of South Africa (equivalent to California shrubland with similar plant species) have shown how the invasive Argentine ant can disrupt the whole ecosystem.<sup>10</sup> In South Africa the Argentine ant displaces native ants as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant invasion the large-seeded plants that were protected by the native ants all but

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<sup>4</sup> Bolger, D. T., T. A. Scott and J. T. Rotenberry. 1997. Breeding bird abundance in an urbanizing landscape in coastal Southern California. *Conserv. Biol.* 11:406-421.

<sup>5</sup> Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056.

<sup>6</sup> Holway, D.A. 1995. The distribution of the Argentine ant (*Linepithema humile*) in central California: a twenty-year record of invasion. *Conservation Biology* 9:1634-1637. Human, K.G. and D.M. Gordon. 1996. Exploitation and interference competition between the invasive Argentine ant, (*Linepithema humile*), and native ant species. *Oecologia* 105:405-412.

<sup>7</sup> Fisher, R.N., A.V. Suarez and T.J. Case. 2002. Spatial patterns in the abundance of the coastal horned lizard. *Conservation Biology* 16(1):205-215. Suarez, A.V. J.Q. Richmond and T.J. Case. 2000. Prey selection in horned lizards following the invasion of Argentine ants in southern California. *Ecological Applications* 10(3):711-725.

<sup>8</sup> Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056. Bond, W. and P. Slingsby. Collapse of an Ant-Plant Mutualism: The Argentine Ant (*Iridomyrmex humilis*) and Myrmecochorous Proteaceae. *Ecology* 65(4):1031-1037.

<sup>9</sup> Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.

<sup>10</sup> Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. *Nature* 413:635-639.

disappear. So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species composition of the plant community by disrupting long-established seed dispersal mutualisms. In California, some insect eggs are adapted to being buried by native ants in a manner similar to plant seeds<sup>11</sup>.

While these impacts resulting from fuel modification can be reduced through siting and design alternatives for new development, they cannot be completely avoided, given the high fire risk and the extent of ESHA on the site. The Commission finds that the loss of chaparral ESHA resulting from the removal, conversion, or modification of natural habitat for new development including fuel modification and brush clearance must be mitigated. The acreage of habitat that is impacted must be determined based on the size of the required fuel modification zone.

In this case, the applicant's fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of the standard three zones of vegetation modification, with adjustments made due to the proximity of neighboring parkland and retaining walls on the property. Zones "A" (setback zone) is shown in a radius extending approximately 20 feet from the proposed structure. A "B" Zone (irrigation zone) extends 50 feet from the proposed structure. The "C" Zone (thinning zone) extends for a distance of 150 feet beyond the "A" and "B" zones north, east, and south of the proposed structure. Zone C extends west of the residence to Las Virgenes Canyon Road. No fuel modification will occur on parkland properties located west of the subject property across Las Virgenes Road.

The ESHA area affected by the proposed development does not include the existing disturbed 30-foot wide easement area for Las Virgenes Road that was previously graded and denuded of ESHA prior to the effective date of the Coastal Act. As such, the ESHA areas that will be permanently impacted by the proposed project include a portion of the fuel modification area for the project and the residence, garage, driveway, slope remediation, septic system and stairway areas. The precise area of ESHA that will be impacted by the proposed development has not been calculated. Therefore, the Commission finds that it is necessary to require the applicant to delineate the ESHA both on and offsite that will be impacted by the proposed development including the areas affected by fuel modification and brushing activities, as required by **Special Condition Seven (7)**.

The Commission has identified three methods for providing mitigation for the unavoidable and permanent loss of ESHA resulting from development, including habitat restoration, habitat conservation, and an in-lieu fee for habitat conservation. The Commission finds that these measures are appropriate in this case to mitigate the loss of chaparral habitat on and offsite. These three mitigation methods are provided as three available options for compliance with **Special Condition Seven (7)**. The first method is to provide mitigation through the restoration of an area of degraded habitat (either on the project site, or at an off-site location) that is equivalent in size to the area

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<sup>11</sup> Hughes, L. and M. Westoby. 1992. Capitula on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. *Functional Ecology* 6:642-648.

of habitat impacted by the development. A restoration plan must be prepared by a biologist or qualified resource specialist and must provide performance standards, and provisions for maintenance and monitoring. The restored habitat must be permanently preserved through the recordation of an open space easement. This mitigation method is provided for in **Special Condition Seven (7), subpart A.**

The second habitat impact mitigation method is habitat conservation. This includes the conservation of an area of intact habitat equivalent to the area of the impacted habitat. The parcel containing the habitat conservation area must be restricted from future development and permanently preserved. If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage could be used to provide habitat impact mitigation for other development projects that impact ESHA. This mitigation method is provided for in **Special Condition Seven (7), subpart B.**

The third habitat impact mitigation option is an in-lieu fee for habitat conservation as provided for in **Special Condition Seven (7), subpart C.** The fee is based on the habitat types in question, the cost per acre to restore or create the comparable habitat types, and the acreage of habitat affected by the project. In order to determine an appropriate fee for the restoration or creation of chaparral and coastal sage scrub habitat, the Commission's biologist contacted several consulting companies that have considerable experience carrying out restoration projects. Overall estimates varied widely among the companies, because of differences in the strategies employed in planning the restoration (for instance, determining the appropriate number of plants or amount of seeds used per acre) as well as whether all of the restoration planting, monitoring and maintenance was carried out by the consultant or portions are subcontracted. Additionally, the range of cost estimates reflect differences in restoration site characteristics including topography (steeper is harder), proximity to the coast (minimal or no irrigation required at coastal sites), types of plants (some plants are rare or difficult to cultivate), density of planting, severity of weed problem, condition of soil, etc. Larger projects may realize some economy of scale.

Staff has determined that the appropriate mitigation for loss of coastal sage scrub or chaparral ESHA should be based on the actual installation of replacement plantings on a disturbed site, including the cost of acquiring the plants (seed mix and container stock) and installing them on the site (hydroseeding and planting). Three cost estimates were obtained for the installation of plants and seeds for one-acre of restoration. These estimates were \$9,541, \$12,820, and \$13,907 per acre of plant installation. The Commission finds it appropriate to average the three estimates of plant installation to arrive at the reasonable in-lieu fee to mitigate for the loss of ESHA associated with the approval of development within an ESHA. Based on this averaging, the required in-lieu fee for habitat mitigation is \$12, 000 (rounded down from the average figure of \$12,089 to simplify administration) per acre of habitat.

The Commission finds that the in-lieu fee of \$12,000 per acre is appropriate to provide mitigation for the habitat impacts to ESHA areas where all native vegetation will be removed (building site and the "A" zone required for fuel modification), and where

vegetation will be significantly removed and any remaining vegetation will be subjected to supplemental irrigation (the "B" zone or any other irrigated zone required for fuel modification). In these areas, complete removal or significant removal of ESHA, along with irrigation completely alters the habitat and eliminates its value to the native plant and animal community.

ESHA modified for the "C" zone that is thinned but non-irrigated (required for fuel modification) is certainly diminished in habitat value, but unlike the building site, "A" zone, "B" zone, and any other irrigated zone, habitat values are not completely destroyed. Native vegetation in the "C" zone is typically required to be thinned, and shrubs must be maintained at a certain size to minimize the spread of fire between the individual plants. This area is not typically required to be irrigated. As such, the Commission finds that it is not appropriate to require the same level of in-lieu fee mitigation for impacts to ESHA within a non-irrigated "C" zone required for fuel modification. Although the habitat value in the "C" zone (or any other non-irrigated zone) is greatly reduced, it is not possible to precisely quantify the reduction. The Commission's biologist believes that the habitat value of non-irrigated fuel modification zones is reduced by at least 25 percent (and possibly more) due to the direct loss of vegetation, the increased risk of weed invasion, and the proximity of disturbance. The Commission finds that it is also less costly difficult to restore chaparral habitat when some of the native vegetation remains, rather than when the entire native habitat is removed. Because of the uncertainty and the inability to precisely quantify the reduction in habitat value, the Commission concludes that it is warranted to impose a mitigation fee of \$3,000 per acre (one quarter of the cost of full restoration) for the "C" zone or other non-irrigated fuel modification zone.

In this case, the applicant's approved fuel modification plan shows the use of the three zones of vegetation modification. Zones "A" (setback zone) is shown extending 20 feet from the structure. Zone "B" (irrigation zone) extends 30 beyond Zone "A." Zone "C" (thinning zone) is provided for a distance of 150 feet beyond Zone "B," except to the west where it extends to Las Virgenes Road. Brush clearance will not be required on adjacent properties. As discussed above, the ESHA area affected by the proposed development does not include the existing disturbed County owned road easement area previously denuded of ESHA prior to the effective date of the Coastal Act. As such, the ESHA areas that will be impacted by the proposed project are the required fuel modification area and the areas where the residence, garage, septic tank, stairway, and a portion of the driveway will be sited. The appropriate in-lieu fee calculation would then be based on \$12,000 per acre for any irrigated fuel modification area (the "A" and "B" Zones) or developed area and \$3,000 per acre of un-irrigated fuel modification area (zone "C") or brush clearance area.

Should the applicant choose the in-lieu fee mitigation method, the fee shall be provided to the Mountains Recreation and Conservation Authority for the acquisition or permanent preservation of natural habitat areas within the coastal zone. This mitigation method is provided for in **Special Condition Seven (7), subpart C.**

The Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area, **Special Condition Three (3)** requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used. Additionally, **Special Condition Three (3)** ensures that the applicant proposed revegetation of the unpermitted dirt road is not only completed, but includes use of native plant communities.

The Commission notes that the use of rodenticides containing anticoagulant compounds have been linked to the death of sensitive predator species, including mountain lions and raptors, in the Santa Monica Mountains. These species are a key component of chaparral and coastal sage scrub communities in the Santa Monica Mountains considered ESHA. Therefore, in order to avoid adverse impacts to sensitive predator species, **Special Condition Three (3)**, disallows the use of rodenticides containing any anticoagulant compounds on the subject property.

Furthermore, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition Five (5)**. This restriction specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. The limitation imposed by Special Condition Five (5) avoids loss of natural vegetative coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

The Commission notes that streams and drainages, such as streams located downslope of the property, provide important habitat for plant and animal species. Section 30231 of the Coastal Act provides that the quality of coastal waters and streams shall be maintained and restored whenever feasible through means such as: controlling runoff, preventing interference with surface water flows and alteration of natural streams, and by maintaining natural vegetation buffer areas. In past permit actions the Commission has found that new development adjacent to or upslope of coastal streams and natural drainages results in potential adverse impacts to riparian habitat and marine resources from increased erosion, contaminated storm runoff, introduction of non-native



and invasive plant species, disturbance of wildlife, and loss of riparian plant and animal habitat.

The Commission finds that potential adverse effects of the proposed development on riparian and aquatic habitats of these streams may be further minimized through the implementation of a drainage and polluted runoff control plan, which will ensure that erosion is minimized and polluted run-off from the site is controlled and filtered before it reaches natural drainage courses within the watershed. Therefore, the Commission requires **Special Condition Two (2)**, the Drainage and Polluted Runoff Control Plan, which requires the applicant to incorporate appropriate drainage devices and Best Management Practices (BMPs) to ensure that run-off from the proposed structures, impervious surfaces, and building pad area is conveyed offsite in a non-erosive manner and is treated/filtered to reduce pollutant load before it reaches coastal waterways. Special Condition Two (2) will ensure implementation of these and other BMPs to reduce polluted runoff.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The subject site contains environmentally sensitive habitat. Therefore, **Special Condition Eight (8)** limits night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the night time rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area. In addition, low intensity security lighting will assist in minimizing the disruption of wildlife traversing this area at night that are commonly found in this rural and relatively undisturbed area. Thus, the lighting restrictions will attenuate the impacts of unnatural light sources and reduce impacts to sensitive wildlife species.

Furthermore, fencing of the site would adversely impact the movement of wildlife through the chaparral ESHA on this parcel. Therefore, the Commission finds it is necessary to limit fencing to the building pad area as required in **Special Condition Three (3)**.

Finally, the Commission finds that the amount and location of any new development that may be proposed in the future on the subject site is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, to ensure that any future structures, additions, change in landscaping or intensity of use at the project site, that may otherwise be exempt from coastal permit requirements, are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, **Special Condition Six (6)**, the future development restriction, has been required. **Special Condition Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230, 30231, 30240, and 30107.5 of the Coastal Act.

#### **D. Water Quality**

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, and introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems. Section 30231 of the Coastal Act states:

***The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.***

The project site is located in the upper Las Virgenes Canyon watershed. Las Virgenes Creek and Malibu Creek are located downstream of the property. While no development is proposed in drainages onsite, the proposed development will result in an increase in impervious surface, which in turn decreases the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries,

and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85<sup>th</sup> percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition No. Two (2)**, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

Furthermore, interim erosion control measure implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that **Special Condition No. Three (3)** is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

Finally, the proposed development includes the installation of an onsite private sewage disposal system to serve the residence. The County of Los Angeles Environmental Health Department has given in-concept approval of the proposed septic system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

## E. Visual Resources

Section **30251** of the Coastal Act states:

***The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Reservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.***

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. Section 30251 also requires that development be sited and designed to protect views of scenic areas, minimize alteration of landforms, and be visually compatible with the surrounding area. The Commission is required to review the publicly accessible locations where the proposed development is visible to assess potential visual impacts to the public.

The subject site is located within a rural area characterized by expansive, naturally vegetated mountains. The site is located on a hillside extending up from Las Virgenes Road. The proposed residence will be visible from Las Virgenes Road and State park lands west of the property, across Las Virgenes Road. Areas surrounding the property to the west, south, and east are undeveloped. Dense development associated with a hindu temple, Soka University, and a single family exists to the north of the property.

The applicant proposes to construct a two story, 34 ft. high 4,452 sq. ft. single-family residence with attached 595 sq. ft. garage, septic system, retaining walls, paved driveway, access stairway, and 3,713 cu. yds. of grading (3,650 cu. yds. cut; 63 cu. yds. fill; 3,587 cu. yds. export). The applicant also proposes restoration of an unpermitted dirt road on the property back to natural conditions. Due to the steepness of terrain on the project site and existing road easements on the property, construction of the residence will require grading and landform alteration wherever it is sited. The applicant has proposed the building on a relatively flat area adjacent to Las Virgenes Road. This location minimizes the need for grading for the residence and reduces the length of the driveway necessary to access the residence. Despite this siting, the project will still involve 3,713 cu. yds of grading (3,650 yds. cut; 63 cu. yds fill), of which 1,440 cu. yds is for the house, 1,913 cu yds is for the driveway, and 360 cu yds. is for remediation of steep slopes surrounding the driveway and residence. The Commission notes that all siting and design alternatives for the house and driveway are either geologically infeasible or would require additional grading or vegetation removal. The residence will be 25 feet high from finished grade and clearly visible from Las Virgenes Road and public parkland. The structures will not block public views of the ocean or mountains, though, due to the siting of the structures and the orientation of the property.

Given its location on a hillside adjacent to Las Virgenes Road and public parkland, the proposed development will impact views from public roads and public parks not matter where it is located on the subject property. As discussed in Section IV.B. Environmentally Sensitive Habitat Areas, outright denial of all residential use of the property would interfere with reasonable investment-backed expectations of the applicant and deprive the property of all reasonable economic use as described in Section 30010 of the Coastal Act. In chaparral ESHA areas in the Santa Monica Mountains, the Commission has required, through past permit actions, that development be clustered on a lot and the building pad size not exceed 10,000 sq. ft. to minimize impacts on the sensitive habitat. In this case, the proposed project has been sited and designed such that the proposed building development area (excluding the road, access stairway, and slope remediation) is approximately 4,800 sq. ft. Additionally, the development has been sited on a relatively flat area adjacent to Las Virgenes Road so as to reduce landform alternation and removal of native vegetation. As such, the proposed structures will be sited to minimize impacts to coastal resources to the extent feasible, while still providing adequate residential use of the site.

The visual impact of the proposed structure, water tank, and retaining walls can be minimized by requiring these structures be finished in a color consistent with the surrounding natural landscape and, further, by requiring that windows on the proposed residence be made of non-reflective glass. To ensure visual impacts associated with the colors of the structure and the potential glare of the window glass are minimized, the Commission requires the applicant to use colors compatible with the surrounding environment and non-glare glass, as detailed in **Special Condition Nine (9)**.

Visual impacts associated with proposed grading, and the structures themselves, can be further reduced by the use of appropriate and adequate landscaping. Therefore, **Special Condition Three (3)** requires the applicant to ensure that the vegetation on site remains visually compatible with the native flora of surrounding areas. Implementation of Special Condition Three (3) will soften the visual impact of the development from public view areas. To ensure that the final approved landscaping plans are successfully implemented, Special Condition Three (3) also requires the applicant to revegetate all disturbed areas, including the slope remediation areas and unpermitted dirt road, in a timely manner and includes a monitoring component to ensure the successful establishment of all newly planted and landscaped areas over time. Special Condition Three (3) also requires native vertical landscaping elements around the proposed residence to soften views of the residence from Las Virgenes Road.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic roads and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The subject site contains environmentally sensitive habitat. Therefore, **Special Condition Eight (8)** limits night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the nighttime rural

character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area.

Finally, regarding future developments or improvements, certain types of development on the property, normally associated with a single-family residence, which might otherwise be exempt, have the potential to impact scenic and visual resources in this area. It is necessary to ensure that any future development or improvements normally associated with the entire property, which might otherwise be exempt, is reviewed by the Commission for compliance with the scenic resource policy, Section 30251 of the Coastal Act. **Special Condition Six (6)**, the Future Development Restriction, will ensure that the Commission will have the opportunity to review future projects for compliance with the Coastal Act. Further, **Special Condition Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the subject property and provides any prospective purchaser with recorded notice that the restrictions are imposed on the subject property.

Therefore, the Commission finds that the project, as conditioned, minimizes adverse effects to public views to and along the coast and minimizes the alternation of natural landforms. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

## **F. Cumulative Impacts**

The Commission has consistently emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area. Section **30250(a)** of the Coastal Act states:

***New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.***

Section **30105.5** of the Coastal Act defines the term “cumulatively” as it is used in Section **30250(a)** to mean:

***[T]he incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.***

The applicant is requesting after-the-fact approval of subdivisions which created the subject 1.94-acre parcel. In 1958, an approximately 22-acre parcel was divided into five lots, which included the area encompassed by the subject lot. As a result of the subdivision, an approximately 8-acre lot was created that included the entire subject lot. Following this subdivision, in 1961, a two lot subdivision occurred of the 8-acre lot creating the existing 1.94-acre lot subject to this application (Assessor's Parcel Number 4455-034-035) and a remaining 6.36-acre lot, which was further subdivided and recombined with other lots following 1961. The earlier 1959 five-lot subdivision did not comply with the applicable requirements of the Subdivision Map Act and/or Los Angeles County Planning and Zoning ordinances. According to Los Angeles County, the properties with the following assessor's parcel numbers were originally included in the area encompassed by the unpermitted five-lot subdivision: 4455-034-035; 4455-034-050; 4455-034-019; 4455-034-020; 4455-034-043; 4455-034-059; and 4462-030-903.

In 1984, the County of Los Angeles issued a Conditional Certificate of Compliance (CC 88-0083) on the property to "legalize" the parcel pursuant to the Subdivision Map Act. In April 1991 the County recorded a Certificate of Compliance Clearance of Conditions for CC 88-0083 (**Exhibit 3**). Although the 1958 (five-lot) subdivision and the 1961 (two-lot) subdivision occurred prior the effective date of the Coastal Act in 1977, because these lots were created in non-compliance with the requirements of the Subdivision Map Act and Los Angeles County Planning and Zoning Ordinances in place at the time, this development is not considered to be vested. The 1988 Certificate of Compliance which "legalized" this lot pursuant to the Subdivision Map Act is considered the first legal authorization for the land division and, therefore, requires a coastal development permit. However, the landowners at the time failed to secure a coastal development permit for the Certificate of Compliance. The applicant is requesting after-the-fact authorization for the subject site that was created pursuant to the 1988 Certificate of Compliance #88-0083.

The Commission typically reviews the creation of lots through a subdivision of land in a comprehensive manner and not on a piecemeal basis. The Commission review typically entails an analysis of the individual and cumulative impacts of the subdivision on coastal resources. To accomplish this the Commission reviews the proposed lot sizes and lot configurations to ensure consistency with minimum lot size requirements of the LUP, surrounding lot sizes, and to ensure each lot can be developed consistent with Chapter Three Policies of the Coastal Act. To adequately analyze the environmental impacts of a subdivision and determine consistency with Chapter Three Policies of the Coastal Act the applicant is required to submit detailed grading plans, geology reports, percolation tests, biological studies, viewshed analysis and other studies that encompass the entire subdivision.

In this case, a comprehensive analysis of the land divisions, which created a total of seven separate parcels, is not possible because the lots have been sold to multiple owners and the Commission has permitted development on three of those parcels. In 1977, the Commission approved Coastal Development Permit 1602 for construction of a

single-family residence on APN 4455-034-019. In 1977 and 1995, the Commission approved Coastal Development Permits 5814, 4-95-172, and 4-95-225 for a Hindu temple and associated improvements on APN4455-034-050. In 1982 the Commission approved retention of a mobile home on APN 4455-034-043. Because of the separate ownerships and past permit actions, the Commission review, in this case, is limited to impacts of recognizing the creation of the subject 1.94-acre parcel.

The subject parcel and adjacent parcels that were subject to the underlying subdivision are in separate ownerships and the current landowners were not involved in the original subdivision of the original parent parcel. The Commission recently addressed this specific situation in the approval of the Malibu Local Coastal Program (LCP). Although the Malibu LCP is not the standard of review for development in Los Angeles County, the LCP provides policy guidance regarding the certificate of compliance issue in this particular case. The Commission found in the approval of the Malibu LCP that:

***A land division for which a certificate of compliance is requested may be approved where the land division complies with all requirements of Section 15.2 except the minimum parcel size, in two situations: 1) where the Coastal Commission previously approved a permit for development on one of the parcels created from the same parent parcel, those parcels do not have a common owner, and the owner requesting the certificate of compliance acquired the parcel prior to certification of the LCP in a good-faith, arm's length transaction and 2) where the parcel for which the certificate is requested is not in common ownership with any other contiguous parcels created from the same parent parcel and the owner acquired the parcel prior to certification of the LCP in a good-faith, arm's length transaction. (Sections 15.3 (C) and (D)). These provisions will prevent hardship to a subsequent purchaser, who was not the one who illegally subdivided the property and did not know or have reason to know that the parcel was created without compliance with the Coastal Act, if applicable, or other state laws or local ordinances. For all certificates of compliance that require a coastal development permit, a transfer of development credit is required to mitigate the cumulative impacts on coastal resources from creating a new parcel.***

In this case, the Commission has approved a permit for development on three of the parcels created from the same parent parcel, the applicant purchased the property in a good faith, arm's length transaction, and the subject parcel is not in current ownership with any other contiguous parcels created from the parent parcel. Therefore, the Commission finds that given the above set of facts in this particular case, approval of the certificate of compliance is appropriate. Given the facts of this particular case, denial of the coastal development permit would result in an unreasonable hardship to the applicant who purchased this property in good faith without knowing the subject parcel was created without the benefit of a coastal development permit. However, the creation of an additional parcel in the Santa Monica Mountains will result in potential



adverse cumulative impacts to coastal resources and therefore mitigation is required as discussed below.

The Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area in past permit actions. The cumulative impact problem stems from the existence of thousands of undeveloped and poorly sited parcels in the mountains along with the potential for creating additional parcels and/or residential units through subdivisions and multi-unit projects. Because of the large number of existing undeveloped lots and potential future development, the demands on road capacity, services, recreational facilities, and beaches could be expected to grow tremendously. In addition, future build-out of many lots located in environmentally sensitive areas would create adverse cumulative impacts on coastal resources.

As a means of addressing the cumulative impact problem in past actions, the Commission has consistently required, as a special condition to development permits for land divisions and multi-unit projects, participation in the Transfer Development Credit (TDC) program as mitigation, such as has been done in past actions including CDPs P-78-155 (Zal), P-78-158 (Eide), P-81-182 (Malibu Deville), 5-83-43 (Heathercliff), 5-83-591 (Sunset-Regan), 5-85-748 (Ehrman & Coombs), 4-98-281 (Cariker), 4-00-028 (Layman), 4-00-044 (Blank Par-E, LLC) and 4-01-046 (PCH-Tyler Associates, Inc.). The TDC program has resulted in the retirement from development of existing, poorly sited, and non-conforming parcels at the same time new parcels or units were created. The intent of the program is to insure that no net increase in residential units results from the approval of land divisions or multi-family projects while allowing development to proceed consistent with the requirements of §30250(a). In summary, the Commission has found that the TDC program, or a similar technique to retire development rights on selected lots, remains a valid means of mitigating cumulative impacts. Without some means of mitigation, the Commission would have no alternative but to deny such projects, based on the provisions of §30250(a) of the Coastal Act.

The applicant is requesting approval to legalize the 1.94-acre subject parcel, which was created through an unpermitted five-lot subdivision and a subsequent two-lot subdivision. Staff's review indicates that the incremental contribution to cumulative impacts would be the creation, in this case, of one additional lot. As described above, the subject parcel and the other parcels that were part of the two previous subdivisions are held in separate ownerships. At such time as development is proposed on one or more of the other parcels, the Commission will consider the cumulative impacts associated with the creation of each individual lot and determine the appropriate mitigation that should be required. Impacts such as traffic, sewage disposal, recreational uses, visual scenic quality, and resource degradation are associated with the development of an additional parcel in this area. Therefore, the Commission finds it necessary to impose cumulative impact mitigation requirements as a condition of approval of this permit in order to insure that the cumulative impacts of the creation of an additional buildable lot is adequately mitigated.

Therefore, **Special Condition No. Twelve (12)** requires the applicant to mitigate the cumulative impacts of the development of this property, either through purchase of one (1) TDC or participation along with a public agency or private nonprofit corporation in retiring habitat or watershed land in amounts that the Executive Director determines will retire the equivalent potential building site. The Commission finds that, as conditioned, the proposed project is consistent with §30250 of the Coastal Act.

## G. Unpermitted Development

Unpermitted development occurred on the subject parcel prior to submission of this permit application involving creation of the subject lot and grading and clearing of a dirt road through the property. The subject lot was created as part of a five lot subdivision in 1958 and subsequent two lot subdivision in 1961. The 1958 subdivision that created the subject lot did not comply the requirements of the Subdivision Map Act and/or Los Angeles County Planning and Zoning ordinances. In 1988, the County of Los Angeles issued a Conditional Certificate of Compliance (#88-0083) for the property to “legalize” the pursuant to the Subdivision Map Act. The 1988 Certificate of Compliance which “legalized” this lot pursuant to the Subdivision Map Act is the first legal recognition of the subdivision and, therefore, requires a coastal development permit. However, the landowners at the time failed to secure a coastal development permit for the Certificate of Compliance. The applicant is now requesting after-the-fact approval to authorize the subject parcel as it was created pursuant to the 1988 Certificate of Compliance in order to address the unpermitted development. **Special Condition Twelve (12)** requires the applicant to mitigate the cumulative developments associated with creation of a new lot by extinguishing development rights on one building site in the Santa Monica Mountains.

Development in the form of a dirt road has also occurred on the subject site without the required coastal development permits. Creation of the road involved grading of land up to the currently proposed building site and clearing of vegetation from Las Virgenes Road to the northern property line of the parcel. The applicant is proposing, as part of this application, restoration of that portion of the road not included in the proposed building pad back to natural conditions. This will involve weeding of non-native plants in the road area and planting of native plants according to the approved Final Fuel Modification Plan for the property. **Special Condition Three (3)** requires the application to submit final landscaping plans that will include the road restoration for review by the Executive Director. These plans shall include use of native drought resistant plants and monitoring for a period no less than five years.

In order to ensure that the matter of unpermitted development is resolved in timely manner, **Special Condition Thirteen (13)** requires the applicant satisfy all conditions of this permit, which are prerequisite to the issuance of this permit within 180 days of commission action, or within such additional time as the Executive Director may grant for good cause.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

## **H. Local Coastal Program**

Section 30604 of the Coastal Act states:

***a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).***

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program, which conforms to Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the projects and are accepted by the applicant. As conditioned, the proposed developments will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed developments, as conditioned, will not prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for this area which is also consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

## **G. California Environmental Quality Act**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission finds that the proposed project, as conditioned, will not have significant adverse effects on the environment within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned,

has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 585-1800



### ADDENDUM

**DATE:** October 11, 2005  
**TO:** Commissioners and Interested Parties  
**FROM:** South Central Coast District Staff  
**SUBJECT:** Agenda Item 16c, Thursday, October 13, 2005, Coastal Development Permit Applications 4-04-121 (Miran Enterprises, LLC)

The purpose of this addendum is to make changes to the staff report. *Note: ~~Strikethrough~~ indicates text deleted from the September 28, 2005 staff report pursuant to this addendum and underline indicates text added to the September 28, 2005 staff report pursuant to this addendum.*

1. Project Description on Page 1 of the staff report shall be revised as follows:

**PROJECT DESCRIPTION:** Construction of a two story, ~~34 ft.~~ 35 ft. high 4,452 sq. ft. single-family residence with attached 595 sq. ft. garage, septic system, retaining walls, paved driveway, access stairway, and 3,713 cu. yds. of grading (3,650 cu. yds. cut; 63 cu. yds. fill; 3,587 cu. yds. export). The application also includes after-the-fact approval of the subject parcel that was created pursuant to Certificate of Compliance # 88-0083 and restoration of an unpermitted dirt road back to natural conditions.

|                            |  |
|----------------------------|--|
| <b>Lot area:</b>           | 1.94 acres   |
| <b>Building coverage:</b>  | 1,954 sq. ft.  |
| <b>Pavement coverage:</b>  | 5,643 sq. ft.  |
| <b>Landscape coverage:</b> | 25,757 sq. ft.                                       |
| <b>Height:</b>             | <del>34 ft.</del> <u>35 ft.</u> above existing grade |
| <b>Parking spaces:</b>     | 3  |

2. Summary of Staff Recommendation on Page 2 of the staff report shall be revised as follows:

The applicant proposes to construct a two story, ~~34 ft.~~ 35 ft. high 4,452 sq. ft. single-family residence with attached 595 sq. ft. garage, septic system, retaining walls, paved driveway, access stairway, and 3,713 cu. yds. of grading (3,650 cu. yds. cut; 63 cu. yds. fill; 3,587 cu. yds. export). Additionally, the applicant proposes to restore the existing unpermitted dirt road on the property back to natural conditions. Construction of the residence, driveway, septic system, access stairway, and fuel modification required for the structure for fire protection purposes requires the removal of chaparral and coastal sage scrub ESHA. Additionally, the residence will be highly visible from Las Virgenes Road and neighboring parkland.

3. Section IV.A. Project Description and Background on Page 15 of the staff report shall be revised as follows:

The applicant proposes to construct a two story, ~~34-ft.~~ 35 ft. high 4,452 sq. ft. single-family residence with attached 595 sq. ft. garage, septic system, retaining walls, paved driveway, access stairway, and 3,713 cu. yds. of grading (3,650 cu. yds. cut; 63 cu. yds. fill; 3,587 cu. yds. export) (**Exhibit 4-8**). The application also includes after-the-fact approval of the subject parcel that was created pursuant to Certificate of Compliance # 88-0083 (**Exhibit 3**) and restoration of an unpermitted dirt road back to natural conditions.

4. Section IV.E. Visual Resources on Page 36 of the staff report shall be revised as follows:

The applicant proposes to construct a two story, ~~34-ft.~~ 35 ft. high 4,452 sq. ft. single-family residence with attached 595 sq. ft. garage, septic system, retaining walls, paved driveway, access stairway, and 3,713 cu. yds. of grading (3,650 cu. yds. cut; 63 cu. yds. fill; 3,587 cu. yds. export).

5. Special Condition Four (4) on Page 8 of the staff report shall be revised as follows:

#### **4. Assumption of Risk**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from ~~landslide, erosion, earth movement, and wildfire~~; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement.

6. Section IV.B. Geologic and Wildfire Hazard page 19 of the staff report shall be revised as follows:

Furthermore, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition Five (5)**. This restriction specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. The limitation imposed by **Special Condition Five (5)** avoids loss of natural vegetative coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

~~The Commission notes that because there remains some inherent risk in building in the Santa Monica Mountains, which are prone to landslides and destruction from wildfire. The Commission can only approve the project if the applicant assumes the~~

~~liability from the associated risks as required by **Special Condition Four (4)**. The assumption of risk will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same.~~

**Special Condition Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restriction on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restriction are imposed on the subject property.

7. Section IV.E. Visual Resources on Page 37 of the staff report shall be revised as follows:

The visual impact of the proposed structure, ~~water tank~~, and retaining walls can be minimized by requiring these structures be finished in a color consistent with the surrounding natural landscape and, further, by requiring that windows on the proposed residence be made of non-reflective glass. To ensure visual impacts associated with the colors of the structure and the potential glare of the window glass are minimized, the Commission requires the applicant to use colors compatible with the surrounding environment and non-glare glass, as detailed in **Special Condition Nine (9)**.